

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

OP.No. 34259 of 2000(C)

PETITIONER:

**SMT.SULEKHA KUNJU M., W/O.SAIFUDEEN,
PRIMARY ASSISTANT TEACHER,
AIDED U.P. SCHOOL, PANANGATTIRI,
PALAKKAD DIST.**

BY ADV. SRI.H.BADARUDDIN

RESPONDENTS:

- 1. STATE OF KERALA, REP.BY SECRETARY
TO GOVERNMENT, GENERAL EDUCATION (E)
DEPARTMENT, GOVT. SECRETARIAT,
TRIVANDRUM.**
- 2. THE MANAGER , AIDED U.P.SCHOOL,
PANANGATTIRI, KOLLENGODE,
PALAKKAD DISTRICT.**
- 3. SMT.SHYLA, HEADMISTRESS,
AIDED U.P.SCHOOL PANANGATTIRI,
KOLLENGODE PALAKKAD DISTRICT.**
- 4. ASSISTANT EDUCATIONAL OFFICER,
KOLLENGODE , PALAKKAD DISTRICT.**
- 5. DEPUTY DIRECTOR OF EDUCATION,
PALAKKAD DISTRICT.**

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**6. DIRECTOR OF PUBLIC INSTRUCTIONS
TRIVANDRUM.**

ADDL.R7 IMPEADED

**7. THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION (J) DEPARTMENT,
SECRETARIAT, TRIVANDRUM.**

ADDL.R7 IMPEADED AS PER ORDER DT. 18.3.02 IN CMP. 11165/02.

**BY ADV. SRI.M.BALAGOVINDAN
SRI.VINOD J.DEV
GOVERNMENT PLEADER SRI.V.T.K.MOHANAN**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 28/03/2007, THE COURT ON 26.09.2007 DELIVERED THE
FOLLOWING:**

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OP. NO.34259/2000

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE JUDGMENT IN OP.1099/93 DT. 30.6.2000.

EXT.P2:- COPY OF THE GO(RT) NO.4531/2000/GEN. DT. 9.11.2000.

EXT.P3:- COPY OF THE SENIORITY LIST MAINTAINED IN the 2ND RESPONDENT'S SCHOOL AS ON 1.4.91.

EXT.P4:- COPY OF THE GO(P) NO.178/88/G.EDN. DT. 7.12.88 PUBLISHED IN KERALA GAZETTE NO.2.DT.10.1.89.

EXT.P5:- COPY OF THE APPOINTMENT ORDER TO THE 3RD RESPONDENT, SHYLA.

EXT.P6:- COPY OF THE G.ED DEGREE CERTIFICATE DT. 7.5.87.(IA. NO.4246/2007)

EXT.P6:- COPY OF THE GO(RT) NO.3227/07/GE DT. THIRUVANANTHAPURAM DT. 13.7.07 (IA. NO.12456/2007)

EXT.R3(a):- COPY OF THE APPOINTMENT ORDER AND ITS APPROVAL OF THE PETITIONER.

/TRUE COPY/

P.S. TO JUDGE

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Dated this the 26th day of September, 2007.

J U D G M E N T

The short question that arises for consideration in this Original Petition is whether the claim for promotion made by the petitioner to the post of Headmistress in preference to respondent No.3 is legally valid and sustainable.

2. Petitioner is stated to be working as Primary Assistant Teacher in the school under the management of respondent No.2. She had joined service as a Sanskrit Teacher on September 24, 1973. It is the admitted position that she obtained her B.A degree in the year 1984. According to the petitioner she had passed her BEd. degree examination in April 1986 and the departmental tests in the year 1989. She has also passed her M.A. degree examination in the year 1992-93.

3. Grievance of the petitioner is that the Manager overlooked her claim for promotion to the post of Headmistress which fell vacant on April 1, 1991 and appointed respondent No.3 who is indisputably junior to her. When the issue ultimately reached before the Government, the claim made by the petitioner was repelled as could be seen from Ext.P2 order. The said order is primarily under challenge in this Original Petition. Petitioner has also challenged the amendment to Rule 45 Chapter XIV-A KER to the extent it postulates that a graduate teacher with B.Ed in order to be eligible for promotion as Headmaster has to have to his/her credit atleast 5

year's experience in teaching after acquisition of B.Ed degree.

4. As mentioned earlier, the vacancy in the post of Headmaster had arisen on April 1, 1991 due to the retirement of the incumbent. According to the petitioner she had passed her B.A. degree examination in the year 1984 and obtained B.Ed degree in April 1986. The B.Ed degree certificate (Ext.P6) issued by the University of Calicut bears the date May 7, 1987. It is true that the certificate reveals that the examination was held in April 1986. Petitioner has not been able to produce any document to show that she had acquired B.Ed degree examination in April 1986 which is relevant as far as this case is concerned, since petitioner ought to have acquired 5 years teaching experience after acquisition of B.Ed degree in order to be eligible for promotion to the post of Headmaster as on the date of occurrence of vacancy. Ext.P6 only shows that she had written the B.Ed degree examination in April 1986. Obviously therefore the result could have been published only some time in May/June 1986 or thereafter. Thus clearly, she could not have completed 5 years teaching experience after the acquisition of B.Ed degree on the date of occurrence of vacancy.

5. It is the admitted position that respondent No.3 had joined as a "Trained Graduate Teacher" in the school with effect from January 3, 1978. Petitioner has not raised any dispute with regard to the eligibility of respondent No.3 (qualification wise) to be promoted as Headmistress. But petitioner's contention is that she ought to have been preferred to respondent No.3 since she was senior to the latter.

But as noticed already, petitioner did not have 5 years teaching experience to her credit as on the date of occurrence of vacancy.

6. In the counter affidavit filed by respondent No.3 she had asserted that petitioner had passed her B.Ed degree examination only on August 25, 1986. The said contention has not been refuted by the petitioner; nor has she produced any document to show that she had acquired 5 years teaching experience after acquisition of B.Ed degree as on the date of occurrence of the vacancy. On that short ground the claim made by the petitioner is liable to be repelled. The above aspects were considered by the Government while issuing Ext.P2 order. I do not find any material illegality or irregularity in Ext.P2 order.

7. Though learned counsel for the parties have invited my attention to some of the decisions of this Court in support of their rival contentions, I am of the view that the issue involved in this case can be settled even without reference to the dictum laid down in the above judgments. The facts as revealed from the materials available on record undoubtedly show that petitioner was not qualified on the date of occurrence of vacancy. On the contrary, respondent No.3 had got the requisite qualifications to her credit. The Manager had rightly appointed respondent No.3 which decision was concurrently approved by the authorities. Therefore the challenge against Ext.P2 has to be repelled. I do so.

8. The other contention raised by the petitioner is that the amendment brought in to Rule 45 of Chapter XIV-A KER prescribing

teaching experience for a minimum period of 5 years after acquisition of B.Ed is highly discriminatory, arbitrary and unconstitutional. The above amendment was incorporated in Rule 45 in January 1989. The said amendment has stood the test of time. The above prescription with regard to minimum teaching experience after acquisition of B.Ed degree cannot be held to be arbitrary or discriminatory at all. The rule making authority, in its wisdom, had incorporated the above amendment to ensure that an Upper Primary School Teacher who is to be promoted to the post of Headmaster ought to have atleast a minimum period of teaching experience after acquisition of the B.Ed degree which equips the teacher with training in teaching. There is nothing irrational or unconstitutional in the above prescription. Petitioner has not been able to show as to how the above amendment would become discriminatory or arbitrary. Therefore the challenge to the amendment to Rule 45 also fails.

9. It has now been brought to my notice that respondent No.3 was placed under suspension from service on a charge of misappropriation of noon meal food articles and of improper maintenance of special leave account. Ext.P7 order issued by the Government shows that the Government has upheld the decision of the District Educational Officer to recover the cost of one bag of rice (Rs.450/-) from respondent No.3. It is also revealed from Ext.P7 that the Manager had, on the basis of the enquiry report, imposed punishment of reduction of rank of respondent no.3 to the category of

Assistant Teacher. The Government had rejected the prayer made by respondent No.3 to revoke the order of punishment imposed on her by the management.

10. It is contended by learned counsel for the petitioner that in view of the order of reduction of rank of respondent No.3 as Assistant Teacher, the Manager has to appoint the petitioner as the Headmistress with retrospective effect from the date of arising of vacancy. I have no hesitation to hold that the above contention is totally misconceived. Anyhow, it needs no mention that the Manager has to take appropriate action to fill up the vacant post of Headmaster if there is any, in accordance with the Rules. If the petitioner is next in line for promotion, I do not find any reason why she shall not be considered by the Manager.

The Original Petition is dismissed with the above observation.

A.K. Basheer
Judge.

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